

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of ZOIE SHERMAN, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SAMANTHA SHERMAN, a/k/a SAMANTHA  
OTTEN,

Respondent-Appellant.

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UNPUBLISHED

May 31, 2007

No. 274090

Newaygo Circuit Court

Family Division

LC No. 05-006599-NA

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

Respondent first argues that the evidence did not support the trial court's finding of probable cause to authorize the original petition. At the time probable cause was found, respondent failed to exercise her right to have a judge review the referee's recommendation, as provided in MCR 3.991. Her challenge is thus unpreserved and she must show plain error that affected her substantial rights. *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999). Respondent has not done so. The evidence showed that the allegations of respondent's long history of instability, criminality and poor decision making were true and fell within MCL 712A.2(b)(1) and (2). The fact that the trial court initially released the child to respondent's care was not the equivalent of finding that the allegations in the petition did not fall within MCL 712A.2(b)(1) or (2). Rather, the numerous conditions imposed by the trial court confirmed its finding of probable cause that respondent could not properly care for the child unless assisted and closely monitored.

Respondent next argues the trial court did not provide her with a sufficient advice of rights at the adjudication trial, thereby rendering her no-contest plea invalid. However, counsel for respondent stated on the record that the trial court's advice of rights was sufficient. A party may not take a position in the trial court and subsequently seek redress in an appellate court on the basis of a position contrary to that taken in the trial court. *In re Gazella*, 264 Mich App 668, 679; 692 NW2d 708 (2005); *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). Furthermore, it is well established that the trial court's jurisdiction may not be

collaterally attacked in a subsequent appeal of an order terminating parental rights. *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). Moreover, the lower court record established that respondent's plea was knowing and voluntary, and that she understood its impact.

Lastly, the trial court did not clearly err in finding that the statutory grounds for termination of respondent's parental rights were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The conditions leading to adjudication were respondent's lack of stable housing, lack of income, substance abuse, lack of parenting skills, criminality and periodic incarcerations, and mental health issues. More than 182 days elapsed between the January 25, 2006 initial disposition and the October 4, 2006 termination hearing. While she had custody of the minor child, respondent failed to provide proper care or custody by living in an unstable environment and by committing criminal acts resulting in incarceration that left the child without a suitable caretaker.

Respondent partially complied with, but did not sufficiently benefit from, her parent agency agreement. She never obtained stable housing or employment and continued to demonstrate poor decision making. The testimony of counselor Hill and psychologist Terwillegar clearly showed she would not be able to provide proper care for the child within a reasonable time, and that the child was likely to suffer harm in her care. No caretaker was available to provide alternate custody other than respondent's mother, who was unsuitable.

Affirmed.

/s/ Helene N. White  
/s/ Henry William Saad  
/s/ Christopher M. Murray